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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision : 08.08.2024

VIKASH

.....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Shokeen Singh Verma, Advocate
for the petitioner(s).

Mr. Gaurav Bansal, DAG Haryana.

KIRTI SINGH, J.(Oral)

Prayer in the present petition filed under Section 438 Cr.P.C., is for grant of anticipatory bail to the petitioner, in case FIR No.55 dated 29.03.2022 under Sections 120-B, 409, 420, 467, 468, 471 IPC (Sections 7 and 13 of Prevention of Corruption Act, 1988 added later on) (For brevity 'P.C.Act'), registered at Police Station Jhojhu Kalan, District Charkhi Dadri.

2. That brief facts in the present matter are that a case FIR No. 55 dated 29.03.2022 under sections 120-B,409,420,467,468, 471,201 IPC (Sections 7 & 13 PC Act added later on) Police Station Jhojhu Kalan, was registered on the written complaint of complainant Sh. Subhash Chander Sharma, BDPO, Jhojhu with the allegations that accused Sh. Rajesh Kumar, Village Secretary, misappropriated and embezzled a sum amounting to Rs.81,00,000/- from the account of Gram Panchayat Mandoli. Said Rajesh Kumar while hatching

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Dadri got withdrawn a sum amounting to Rs. 81,05,985/- from bank account No.1926104000038881 and transferred it in the bank accounts of various firms in collusion with their proprietors in order to misappropriate the said amount by forging his signatures on the cheques and other records.

3. Learned counsel for the petitioner submits that the he has been falsely implicated in this case and co-accused Manoj Kumar and Pawan Kumar has already been granted concession of bail by this Court vide orders dated 15.02.2022 in CRM-M-4543-2024 and dated 13.03.2024 in CRM-M-11426-2024 respectively.

4. Vide order dated 01.07.2024, notice of motion was issued and the State counsel had been directed to file reply detailing therein the role and criminal antecedents of the petitioner.

5. Status report dated 03.08.2024 by way of affidavit of Deputy Superintendent of Police-II, District Charkhi Dadri on behalf of respondent-State has already been filed by the learned State counsel.

6. Learned State counsel, in his opposing the relief of anticipatory bail to the petitioner, refers to paragraph No. 3 of the reply, which reads as under:

“3. That during investigation it has been found that accused/petitioner Vikash son of Jaivir resident of village Pichopa Kalan district Charkhi Dadri is proprietor of M/s JV Building Material Supplier, Charkhi Dadri and his firm used to supply construction material in construction work of village panchayats. Co-accused Rajesh Kumar transferred Rs. 43,65,548/- from the account of village Panchayat, Pichopa Kalan in the accounts of petitioner's firm namely M/s JV Building Material Supplier, without doing any work on ground or supply of any product by the petitioner's firm. As per investigation corroborated by the record obtained so far, it has been found that Cheque No. 163991 dated 30.12.21 amounting Rs. 498430/-, Cheque No. 163993 dated 30.12.21 amounting Rs. 483328/-, Cheque No.



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163995 dated 30.12.21 amounting Rs. 475776/-, Cheque No. 163998 dated 10.01.2022 amounting Rs. 498432/-, Cheque No. 164001 dated 14.01.2022 amounting Rs. 448484/-, Cheque No. 164003 dated 17.01.2022 amounting Rs. 483328/-, Cheque No. 164006 dated 27.01.2022 amounting Rs. 497010/- Cheque No. 164007 dated 19.02.2022 amounting Rs. 498432/-, Cheque No. 164008 dated 19.02.2022 amounting Rs. 483328/- (Total amount Rs. 43,65,548/-) was transferred by co-accused Rajesh Gram Sachiv, by forging signatures of BDBO, in the accounts of petitioners firm, without supply of any material. It is further submitted that neither any work was done by the petitioner's firm nor any material was supplied to the panchayat. Prosecution witnesses namely Surender Singh SEPO, Jhojhu Kalan Block and Sombir son of Kamal Singh Gram Sachiv Block Jhujhu Kalan have corroborated this fact in their respective statement. Co-accused Rajesh, in collusion with the present petitioner, accused Pawan and Manoj Kumar forged signatures on cheques to transfer the amount in the firms with their collusion including the firm owned by the petitioner.”

7. Learned State counsel has vehemently argued that the petitioner cannot claim parity with co-accused ManojKumar and Pawan Kumar as accused Manoj Kumar was arrested in the case and was granted bail after having remained in judicial custody for a period of 5 months whereas, co-accused Pawan Kumar has been granted anticipatory bail as he has deposited the entire embezzled amount of Rs. Rs.4,36,811/-. However, the petitioner has embezzled a huge amount of Rs. 43,65,548/- and recovery is to be affected from the petitioner. Hence, custodial interrogation of the petitioner is required and two more case of similar nature are registered against him.

8. This Court has considered the rival submissions made by learned counsel for the parties.

9. In ***Siddharam Satlingappa Mhetre v. State of Maharashtra***¹, (2011)



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Constitution Bench in ***Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565*** case. After a thorough deliberation, the Court arrived at the following conclusion:

"112. The following factors and parameters can be taken into consideration while dealing with anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail, particularly in cases of large magnitude affecting a very large number of people."

10. In ***Jai Prakash Singh Vs. State of Bihar and another : (2012) 4 SCC 379***, Hon'ble Supreme Court held that anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty.

11. That the offence of committing embezzlement of government funds amounting total Rs. 81,05,985/- by the petitioner and co-accused is serious in nature and recovery of Rs. 4365548/- is to be affected from the petitioner. The case is under investigation qua the petitioner and the petitioner is also involved in another case FIR No.473 dated 02.12.2017 under Sections

147/149/323/427/452/506 IPC Police Station Tosham, District Bhiwani.



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12. The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome.

13. In view of the above discussion, this Court is of the considered opinion that there are serious allegations against the petitioner and there is an alleged involvement of huge amount of fraud money. The investigation is at a preliminary stage and there are possibilities of the petitioner hampering with the investigation.

14. In view of the above, without adverting anything on the merits of the case, this Court is of the considered opinion that in order to unearth the true dimensions of the alleged crime, the police requires custodial interrogation of the petitioner in this case. Hence, the petitioner is not entitled for the concession of anticipatory bail and, accordingly, the petition is **dismissed**.

08.08.2024

Kavita Nain

(KIRTI SINGH)
JUDGE

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*